



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2014–N118; FXES11120100000–145–FF01E00000]

Draft Candidate Conservation Agreement with Assurances and Receipt of Application for an Enhancement of Survival Permit for the Oregon Spotted Frog; Old Mill District Properties, Deschutes County, Oregon

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application for an enhancement of survival (EOS) permit under the Endangered Species Act of 1973, as amended (ESA). The permit application includes a proposed candidate conservation agreement with assurances (CCAA) for the Oregon spotted frog addressing conservation and other covered activities at the Old Mill District of the city of Bend in Deschutes County, Oregon. We invite comments from all interested parties on the application, including the CCAA, and an environmental action statement (EAS) prepared pursuant to the requirements of the National Environmental Policy Act (NEPA).

DATES: To ensure consideration, written comments must be received from interested parties no later than **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: To request further information or to submit written comments, please use one of the following methods, and note that your information request or comments are in

reference to the Old Mill CCAA.

- *Internet:* Documents may be viewed on the Internet at

<http://www.fws.gov/oregonfwo/ToolsForLandowners/HabitatConservationPlans/>.

- *Email:* Jennifer_OReilly@fws.gov. Include “Old Mill CCAA” in the subject line of the message or comments.

- *U.S. Mail:* U.S. Fish and Wildlife Service, Bend Field Office, 63095 Deschutes Market Road, Bend, OR 97701.

- *Fax:* 541–383–7638. Include “Old Mill CCAA” in the subject line of the message or comments.

- *In-Person Viewing or Pickup:* Documents will be available for public inspection by appointment during normal business hours at the U.S. Fish and Wildlife Service, Bend Field Office, 63095 Deschutes Market Road, Bend, OR 97701.

FOR FURTHER INFORMATION CONTACT: Nancy Gilbert or Jennifer O’Reilly, U.S. Fish and Wildlife Service, Bend Field Office (see **ADDRESSES**), 541–383–7146 (telephone). If you use a telecommunications device for the deaf, please call the Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: We have received an application from William Smith Properties, Inc.; Fifteen SW Colorado; Mill A Associates Limited Partnership; River Bend Limited Partnership; Mill Shops LLC; Mill Shops Manager LLC Managing Member; River Shops II LLC; Deschutes River Amphitheater LLC; and the River Bend Master Owners Association (collectively, the applicants) for an enhancement of survival permit under the ESA. The permit application includes a CCAA between the applicants and the Service for the Oregon spotted frog (*Rana pretiosa*) in the Old Mill

District of the city of Bend in Deschutes County, Oregon. The Service and the applicants prepared the CCAA to provide the applicants with the opportunity to voluntarily conserve the Oregon spotted frog and its habitat while managing commercial real estate properties that the applicants own or manage. We have made a preliminary determination that the proposed CCAA and permit issuance are eligible for a categorical exclusion under NEPA (42 U.S.C. 4371 *et seq.*). The basis for our preliminary determination is contained in an EAS. We invite comments from all interested parties on the application, including the CCAA and the EAS.

Background Information

Private and other non-Federal property owners are encouraged to enter into CCAAs, in which they voluntarily undertake management activities on their properties to enhance, restore, or maintain habitat benefiting species that are proposed for listing under the ESA, candidates for listing, or species that may become candidates or proposed for listing. Through a CCAA and its associated EOS permit, the Service provides assurances to participating property owners that they will not be subject to increased land use restrictions if the covered species become listed under the ESA in the future, provided the CCAA is being properly implemented and the EOS permit conditions are met.

Application requirements and issuance criteria for EOS permits for CCAAs are found in the Code of Federal Regulations (CFR) at 50 CFR 17.22(d) and 17.32(d). See also our joint policy on CCAAs, which we published in the **Federal Register** with the Department of Commerce's National Oceanic and Atmospheric Administration, National Marine Fisheries Service (64 FR 32726; June 17, 1999), as well as our revisions to that

policy (69 FR 24084; May 3, 2004).

On May 7, 1993, the Service published a 12-month finding in the **Federal Register** (58 FR 27260) that the spotted frog (*Rana pretiosa*) warrants listing under the ESA as threatened in some portions of its range, but this listing action was precluded by other higher priority listing actions. Subsequently, genetic analyses separated the spotted frog into two species: *Rana pretiosa* (Oregon spotted frog) and *Rana luteiventris* (Columbia spotted frog). The Service published these taxonomic changes in the **Federal Register** (62 FR 49398) on September 19, 1997. On August 29, 2013, the Oregon spotted frog was proposed for listing as threatened under the ESA (78 FR 53582). A final listing determination is anticipated in late summer of 2014.

In anticipation of a final listing decision by the Service, the applicants requested assistance from the Service in developing a CCAA addressing the needs of the Oregon spotted frog on lands they own in Bend, Oregon. Under the proposed CCAA, the applicants will address threats to the Oregon spotted frog through implementation of conservation measures that are consistent with their land use activities and the CCAA. Through the EOS permit issued pursuant to section 10(a)(1)(A) of the ESA, the applicants would be authorized to incidentally take Oregon spotted frogs in the course of implementing the CCAA if the species becomes listed under the ESA in the future, as long as the terms and conditions of the permit and the CCAA are followed.

Proposed Action

The Service proposes to approve the CCAA and to issue an EOS permit, both with a term of 20 years, to the applicants for incidental take of the Oregon spotted frog

caused by covered activities, if permit issuance criteria are met. The area to be addressed under this proposed CCAA (i.e., the covered lands) includes 170 acres of land, including 6,909 linear feet along both banks of the Deschutes River, upstream and downstream of the Colorado Street Bridge, Bend, Deschutes County, Oregon. Portions of the covered lands currently provide habitat that is occupied by Oregon spotted frogs. These specific areas include the Casting Pond, the Les Schwab Amphitheater Marsh, and the riparian habitat on the banks of the Deschutes River above the ordinary high water mark.

The proposed CCAA is intended to result in benefits to Oregon spotted frogs by reducing or eliminating threats to the species on the covered lands, and creating or maintaining habitat conditions that are suitable for all life-history stages of the species through the implementation of conservation measures. Conservation measures include: monitoring and maintaining sufficient water levels for the Oregon spotted frog in the Casting Pond through the use of water control devices; periodically removing invasive plants from the Casting Pond to maintain approximately 30 percent aquatic vegetative cover and 70 percent open water; removal of nonnative predators in the Casting Pond should they be discovered during annual surveys; maintaining vegetation along the banks of the Casting Pond to control erosion and potential sedimentation; and protection of the riparian zone along the banks of the Deschutes River within the covered lands through the use of signs and temporary fencing, to address public use that may threaten the integrity of shoreline vegetation that serves as cover for Oregon spotted frogs. Some incidental take of spotted frogs is anticipated with maintenance of the Casting Pond, and with the expansion and construction of stormwater ponds and bioswales that may become temporary habitats.

Consistent with our CCAA Policy (64 FR 32726), the conservation goal of the proposed CCAA is to encourage enhancement and protection of suitable Oregon spotted frog habitat on the covered lands by either maintaining or modifying existing land management so that they are consistent with the conservation needs of the Oregon spotted frog. We can meet this conservation goal with the use of a CCAA by giving non-Federal landowners incentives to implement conservation measures, primarily through regulatory certainty concerning land-use restrictions that might otherwise apply should the Oregon spotted frog become listed under the ESA.

We have made a preliminary determination that the proposed CCAA and permit issuance are eligible for a categorical exclusion under NEPA. The basis for our preliminary determination is contained in an EAS, which is available for public review (see **ADDRESSES**).

Public Comments

We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party on this notice. We particularly seek comments on the following: (1) Biological information concerning the Oregon spotted frog; (2) relevant data concerning this species; (3) additional information concerning the range, distribution, population size, and population trends of the Oregon spotted frog; (4) current or planned activities in the covered lands and their possible impacts on the Oregon spotted frog; (5) identification of any other environmental issues that should be considered by the Service with regard to the proposed permit action; and (6) information

regarding the adequacy of the CCAA pursuant to the requirements for permits at 50 CFR parts 13 and 17.

Public Availability of Comments

All comments and materials we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personally identifiable information (PII) in your comments, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so. Comments and materials we receive, as well as supporting documentation we used in preparing the EAS, will be available for public inspection by appointment, during normal business hours, at our Bend Field Office (see **ADDRESSES**).

Next Steps

We will evaluate the permit application, associated documents, and comments we receive to determine whether the permit application meets the requirements of section 10(a) of the ESA and NEPA and their implementing regulations. We will also evaluate whether issuance of an EOS permit would comply with section 7 of the ESA by conducting a section 7 consultation on the proposed permit action. If we determine that all requirements are met, we will sign the proposed CCAA and issue an EOS permit under section 10(a)(1)(A) of the ESA to the applicants for incidental take of Oregon spotted frogs that is likely to occur with implementation of the CCAA. We will not make

our final decision until after the end of the 30-day public comment period, and we will fully consider all comments we receive during the public comment period.

Authority

We provide this notice in accordance with the requirements of section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and NEPA (42 U.S.C. 4321 *et seq.*) and their implementing regulations (50 CFR 17.22 and 40 CFR 1506.6, respectively).

Paul Henson,
State Supervisor,
Oregon Fish and Wildlife Office,
U. S. Fish and Wildlife Service, Portland, Oregon.

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